91-1445

No. _____

Supreme Court, U.S.
FILED
MAR 2 1992
OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1991

JANINE ADAMICK, JOSEPH ADAMICK, and THE ESTATE OF KATHLEEN JO PRICE, Deceased,

Petitioners,

vs.

AMEX, INC., formerly FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, a California Insurance Company, NEVADA FEDERAL CREDIT UNION, UNITED FIDELITY Insurance Company, a Texas Insurance corporation, BENEFIT CONSULTANTS, INC. a California corporation, and EQUIFAX SERVICES, INC., a Georgia corporation,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the court of appeals so far departed from the usual course of proceedings in contravention of 28 U.S.C. 1332(a)(1) and 1447(d), Federal Rules of Civil Procedure 54(b), 79(a) and Federal Rule of Appellate Procedure 31(a) by denying petitioners the right to raise timely appealed issues and to file an Opening Brief, and by dismissing one appeal because petitioners could not file a brief leaving out valid issues' for want of prosecution, as to deprive petitioners of their constitutional right of access to the courts?

2. Whether insurance companies abuse federal diversity jurisdiction by filing harassing declaratory judgment actions against a non-beneficiary of life insurance proceeds which would be barred in

state court and whether the district court erred in "referring" the issue of payment to a state court action which had been remanded for want of complete diversity, in which state court the Estate of Price can not litigate her abuse of process claims against Amex, Inc.?

PARTIES

The parties in the court below are listed on the cover. The appeal con-concerned only piecemeal orders cert-ified under Fed. R. of Civ. Pro. 54(b), but as the court of appeals addressed non-final orders as to the other defend-ants, petitioners list them in the cap-tion and will serve courtesy copies on these parties.

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1. The Ninth Circuit Has So Far Departed From The Usual Course Of Judicial Proceedings And Sanctioned Such A Departure By The District Court As To Call For The Exercise Of This Court's Supervision And To Deprive Petitioners Of Their Constitutional Right Of Access To The Courts And Property RightsIn These Civil Insurance Diversity Actions.

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2. INSURERS SUCH AS AMEX ABUSE FEDERAL DIVERSITY JURISDICTION BY FILING FRIVOLOUS DECLARATORY JUDGMENT ACTIONS AND AN AMENDED COMPLAINT AGAINST A NON-BENEFICIARY ESTATE WHICH WOULD BE BARRED IN A STATE COURT, BY FILING SUIT WITHOUT DENYING ADAMICK'S CLAIM OR GIVING A REASON FOR NOT PAYING AS REQUIRED UNDER NEVADA LAW, AND PETITIONERS WILL BE DENIED A REMEDY AS THE ESTATE'S ABUSE OF PROCESS CLAIM CAN NOT BE LITIGATED IN THE REMANDED STATE COURT ACTION. 15

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PROVISIONS

STATUTES AND RULES

First, Fifth and Fourteenth Amendments To The United States Constitution

United States Supreme Court Rule 10(a)(1)

The petitioners, Janine Adamick, individually and as Administratrix of the Estate of Kathleen Jo Price, Deceased, respectfully pray that a writ of certiorari issue to review the order of a motions panel of the United States Court of Appeals for the Ninth Circuit entered on August 22, 1991, as to appeal No. 91-15575 only, and the procedures of the the court of appeals in implementing Circuit Rules 11-3, 11.4.1, 27.7, 30-1 and 33.1.

ORDERS BELOW

The orders of the United States Court of Appeals for the Ninth Circuit and of the United States District Court for the District of Nevada were not reported. The partial judgment of the district court was certified as a final order under Federal Rule of Civil Procedure 54(b) and was entered on November

26, 1990 in consolidated Cases CV-S-85-146-HDM, Fireman's Fund American Life Insurance Company v. Janine Adamick and The Estate of Kathleen Jo Price, Deceased, and CV-S-86-306-HDM, Janine Adamick, Joseph Adamick, and Estate of Kathleen Jo Price, Deceased v. Nevada Federal Credit Union, et al., and is appended at App. 8, infra.

The order of the court of appeals dismissing unconsolidated appeal 91-15575 was entered on August 22, 1991 and is at App. 2. An Order dismissing appeal No. 91-15947 for want of entry of any appealable order, to which dismissal petitioners consented, was also entered on August 22, 1991 and is at App. 1.

JURISDICTION OF THIS COURT

The order of a motions panel of the United States Court of Appeals for the Ninth Circuirt in No. 91-15575 was filed on August 22, 1991, App. 2. The

Order denying rehearing, which erroneously also included No. 91-15947, as set out, supra, was entered on November 1, 1991, App. 15.

The jurisdiction of the court arises under 28 U.S.C. §1254(1), and petitioners also respectfully invoke the court's jurisdiction under 28 U.S.C. §2106 and Supreme Court Rule 10.1.(a).

The jurisdiction of the district court was founded in both consolidated cases under 28 U.S.C. §1332(a)(1) and that of the court of appeals rests on 28 U.S.C. §1291.

By Order of January 24, 1992, the Honorable Sandra Day O'Connor granted an extension of time to February 29, 1992 to file this petition for a writ of certiorari.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The constitutional provisions, statutes and rules which are relevant to a determination of this petition are as follows: the First, Fifth and Fourteenth Amendments to the United States Constitution, as the Ninth Circuit's practice of allowing district judges to enter numerous piecemeal orders certified under Fed. R. of Civ. Pro. 54(b) causes so much economic harship as to deny access to the courts, 28 U.S.C. §2106, App. 13, Federal Rules of Appellate Procedure 4(a)(1) , Fed. R. of Civ. Pro. 6(a), App. 16, 11, App. 17, 25(a), 31(a), 54(b), text, App. 19, 58 and 79(a), and Ninth Circuit Rules 11-3 and 11-4, App. 21, 27-7, App. 23, 30-1, 30.11 and 31-2, App. 25, 31-1, App. 26, Advisory notes, App. 27, and Supreme Court Rule 10(a)(1), App. 14.

This petition raises the issues of whether 28 U.S.C. §1447(d) barred the district court's order, App. 8, purporting to decline to rule as to whether an insurance company, Amex, Inc., must pay life insurance proceeds in two consolidated diversity insurance actions and to "refer" this "ultimate issue" to a previously remanded state court action for adjudication, and whether the district court could award $9000 in fees under 28 U.S.C. §1923 to a non-prevail-party, Amex, Inc., and that dismissals under Fed. R. of Civ. Pro. 54(b) as to other defendants are invalid under the doctrine that there must be a final order in each federal consolidated diversity insurance action.

Petitioners' adult daughter, Kathleen Jo Price, joined the Nevada Federal Credit Union in September, 1983 and

applied for life insurance issued by Amex, formerly Fireman's Fund American Life Insurance Company, and agreed to have $5 per month deducted from her credit union account for $50,000 of accidental death coverage.

The application required only her signature, name and account number.

Price died on July 19, 1984. The Clerk County Coroner, upon autopsy, determined that Price died from accidental ingestion of (prescription) drugs, and that was no alcohol in the body, no marks or trauma to the body.

Amex did not deny Adamick's claim, but did not give any reason why it did not pay.

Amex filed Declaratory Judgment action in the United States District Court for the District of Nevada, CV-S-85-146-HDM, naming only Janine Adamick, Price's

mother as defendant, invoking only 28 U.S.C. §1332(a)(1) as the basis for jurisdiction. After the Honorable Roger D. Foley denied Amex's claim for Price's medical records, Amex amended its Complaint and added Price's Estate as a defendant, although it is not a beneficiary.

Adamick and ESTATE filed separate counterclaims. Price sues only for abuse of process and malicious prosecution of a civil action. Under Nevada law, the named beneficiary, Janine Adamick, became the owner of Price's policy and insurance proceeds pass outside an Estate, Peters v. Estate of Peters, 92 Nev. 687, 557 P. 2d 713 (1976).

Subsequently, Janine and Joseph Adamick, but not the non-beneficiary Estate, filed a state court action, which was removed and remanded in its entirety for want of complete diversity

of citizenship under U.S.C. §1332(a)(1), text, App. 17. by Order of the district court entered on February 27, 1987, App. 12. In the same order, the court also consolidated the two cases filed originally in the federal court, No. CV-S-85-146-HDM and CV-S-86-306. (The removed action had been docketed as CV-S-86-555.), App. 13, and directed that all papers be filed in the base case, No. CV-S-85-146, App. 13 and 14.

The court issued a partial judgment certified under Civ. R. of Fed. Procedure, App. 33, attempting to "refer" the issuance of payment to the remanded state court action, as set out supra. on November 20, 1990, which was erroneously placed on the docket sheet as of November 23, 1990 but not stamped ENTERED and distributed until November 26, 1990.

Petitioners object to the clerk's practice of assigning a docket number to orders

several days before it is entered, which allows opposing parties and the courts to allege that motions to amend or notices of appeal are untimely.

Fed. R. of Civ. Pro. 79(a) provides in pertinent part that

> The entry of an order or judgment or judgment shall show the date the entry is made.

Petitioner's appeal was docketed as No. 91-15575. Subsequently, the district court entered an order releasing the bond for $51,000 posted by Amex to Amex by Order signed January 25, 1991, which was filed on the docket as of that date, but not ENTERED until January 28, 1991, App. 6. Petitioners' appeal as to this matter was docketed as 91-15947.

The court of appeals erred by listing only one of the two consolidated cases in each appeal, (CV-S-146-HDM in 91-15575) and CV-S-86-306 in No. 91-15947, App. 1.

The court of appeals also erred in listing Amex as the plaintiff and Adamick as the defendant in each consolidated district court case, and by listing Equifax Services as a defendant in CV-85-146-HDM. See App. 1, only 85-146 listed in appeal 91-15947, App. 2. only 85-146-HDM listed in 91-15575, App. 4, listing both appeals with separate lower court numbers, and App. 15.

The clerk's order of July 31, 1991, denied the motion to consoliate and indicated that 91-15947, appeal re bond, was not taken from a final order. Appellants voluntarily dismissed 91-15947, an Order was entered thereon, App.1, dismissing for lack of an appealable order on August 22, 1991. but the court of appeals nevertheless "dismissed" the appeal for "want of prosecution" by Order

denying reconsideration as to both 91-15575 and 91-15947 on November 1, 1991, App. 15 and also noted that "no further filings will be accepted in these closed dockets."

REASONS FOR GRANTING THE WRIT

1. THE NINTH CIRCUIT HAS SO FAR DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS AND SANCTIONED SUCH A DEPARTURE BY THE DISTRICT COURT AS TO DEPRIVE PETITIONERS OF THEIR CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS, EQUAL PROTECTION OF THE LAWS AND PROPERTY RIGHTS IN THESE DIVERSITY INSURANCE ACTIONS.

The Court of Appeals erred in permitting the district judge to avoid his duty under 28 U.S.C. §1332(a)(1) to make

in these consolidated actions filed originally in the federal court in each instance, and in purporting to "refer" what the district judge stated was the "ultimate issue," i.e. whether Amex must pay insurance proceeds.

28 U.S.C. §1447(d), App. 20, clearly bars such a decision, and this case does not fall into §1447(d)'s only exception.

The district court's failure to rule in these insurance diversity actions, which arose in 1984, have impoverished petitioners who were the original defendants, and this case has been greatly prolonged by the Ninth Circuit's inconsistent rulings, splitting of two consolidated cases and having one appeal apply to one case and the other to the second consolidated cases.

The Ninth Circuit's practice of "double-docketing" has caused filings

in one appeal to be filed in both and has led to a charge that petitioners have filed "duplicative" documents.

The Ninth Circuit declines to correct records and case titles under Fed. R. of Civ. Pro. 60(a).

As set forth heretofore, the court of appeals allows the district court clerk to place an Order on the docket sheet several days before it is ENTERED, thus permitting unethical opposing parties to allege that motions to amend are untimely.

The lower courts have disregarded the plain command of Federal Rule of Evidence 302 which provides that in civil actions the effect of a presumption as to which State law supplies the rule of decision is determined by state law.

Questions of burden of proof of proof are governed by state law in diversity actions, Erie Railroad Co. v.

Tompkins, 304 U.S. 64, 58 S. Ct. 817, (1938), Dick v. New York Life Insurance, 259 U.S. 437, 79 S. Ct. 921 (1959).

Nevada law, Nevada Statutes, the Nevada Administrative Code For Insurance and Nevada presumptions all support petitioners' right to insurance proceeds.

The lower courts err and cause harm to petitioners by permitting entry of numerous Rule 54(b) certified orders, four in this case, and in not recognizing that in consolidated diversity actions, a final order must be entered as to all parties in both cases.

The lower courts fail to heed this court's direction in Curtiss Wright v. General Electric Co., 446 U.S. 1, 100 S.Ct. 1460 (1980).

Petitioners show the court that the district court disregarded and

misapplied 28 U.S.C. §1923, statute which does not permit an award of fees against parties and their counsel, and especially not when insurer Amex, Inc., is not a prevailing party, in that the issue of whether it must pay insurance proceeds was "referred" to the state court.

2. INSURERS SUCH AS AMEX ABUSE FEDERAL DIVERSITY JURISDICTION BY FILING FRIVOLOUS DECLARATORY JUDGMENT ACTION AND AN AMENDED COMPLAINT AGAINST A NON-BENEFICIARY ESTATE WHICH WOULD BE BARRED IN STATE COURT, BY FILING SUIT WITHOUT DENYING ADAMICK'S CLAIM OR GIVING A REASON THEREFORE AS REQUIRED UNDER NEVADA LAW, AND PETITIONERS WILL BE DENIED A REMEDY AS THE ESTATE'S ABUSE OF PROCESS CLAIM CAN NOT BE LITIGATED IN THE STATE COURT.

The petitioners will be denied a

remedy unless they can litigate their counterclaims in the consolidated diversity actions which were filed in the federal court in the first instance.

As the Estate is not a beneficiary, it has no standing in the state courts. The Probate Court found that the Estate lacked standing under Peters, supra, and the Estate did not file an abuse of process claim in the remanded state court civil action.

The federal district judge stated that the parties could "come back" to federal court if the state court declined to lift its stay, but there is no assurance that the federal judge will follow through on said statement if petitioners raise their claims as to payment therein.

Amex filed the first action, seven months after Price's death and without ever first denying the claim and giving

a reason therefore, as required by Nevada statute and the Insurance Code.

Under Nevada law, Amex's actions amount to bad faith and breach of contract and Amex could possibly even be fined.

The Ninth Circuit recently expressed its concern about these "preemptory strike" or redactive actions filed by insurers, many of whom are not the real party in interest. Beneficiaries have the Hobson's choice of expending fees for a lawyer or abandoning their right to payment, whereas the insurer risks little or nothing.

Petitioners challenge the validity of Amex's case under 28 U.S.C. 2202 as there is no real case or controversy to be adjudicated.

Petitioners will have no further recourse in the court of appeals without the intervention of this court.

CONCLUSION

For the foregoing reasons, Petitioners respectfully pray that this Honorable Court grant the Petition For Writ Of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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Attorney At Law
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Las Vegas, NV 89102
Attorney for Petitioners

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, INC., n/k/a Amex, Plaintiff-counter-defendant/Appellee, vs. JANINE ADAMICK, et al., Defendants/counter-Plaintiffs/Appellants.	No. 91-15947 DC# CV-85-146-HDM Nevada (Las Vegas) ORDER (Filed August 22, 1991)

Before: FLETCHER, LEAVY and T.G. NELSON, Circuit Judges

The motion to dismiss this appeal for lack of jurisdiction is granted.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FIREMAN'S FUND AMERICAN FUND AMERICAN LIFE INSURANCE COMPANY, INC., n/k/a Amex, Plaintiff-Appellee, vs. JANINE ADAMICK, individually, et al., and EQUIFAX SERVICES, INC., Defendant.	No. 91-15575 DC# CV-85-0146-HDM Nevada (Las Vegas) ORDER (Filed August 22, 1991)

Before: FLETCHER, LEAVY and T.G. NELSON, Circuit Judges

On June 3, this court ordered that appellants' brief be filed on July 31, 1991. Appellants were warned that no extensions of time would be granted absent a showing of extraordinary circumstances and that failure to comply with the orders of this court would result

in the dismissal of this appeal. On August 2, 1991, this court received a late motion for an extension of time to file the opening brief. See 9th Cir. R. 31-2.3(f). This untimely motion fails to show that appellants are entitled to such relief. Moreover, to date this court has not received an opening brief for this appeal. Accordingly, appellee's motion to dismiss this appeal for lack of prosecution is granted. All other pending motions are denied as moot.

MoCal 8/19/91

APP. 4

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, INC., nka,	91-15575
Plaintiff-Appellee	DC# CV-85-146-HDM
vs.	
JANINE ADAMICK, individually, ESTATE OF KATHLEEN JO PRICE, deceased,	Nevada (Las Vegas)
Defendants-Appellants.	
and	
EQUIFAX SERVICES, INC.,	
Defendants.	
FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, INC.,	91-15947
Plaintiff-counter-defendant-Appellee,	DC# CV-86-306-HDM
vs.	Nevada (Las Vegas)
JANINE ADAMICK, individually, ESTATE OF KATHLEEN JO PRICE, deceased, et al,	ORDER
Defendants-counter-plaintiffs-Appellants.	(Filed July 31, 1991)

The motion to consolidate these appeals is denied. Moreover, within 21 days of the entry of this order, appellant shall show cause why no. 91-15947 should not be dismissed for lack of jurisdiction. No. 91- purports to be an appeal from the district court's denial of a motion to reconsider its order authorizing the return of a $51,000.00 bond posted by defendant Amex. This does not appear to be a final appealable order of the district court.

Failure to comply with this order within the time set out will result in the automatic dismissal of this appeal by the Clerk pursuant to 9th Cir. R. 42-1.

For the Court:

/s/ MOLLY C. DWYER
Motions Attorney/Deputy Clerk

APP. 6

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, Plaintiff, vs. JANINE ADAMICK, THE ESTATE OF KATHLEEN JO PRICE, Deceased, Defendants.	CV-S-85-146-HDM (Base File)
JANINE ADAMICK, Individually, JOSEPH ADAMICK, individually and ESTATE OF KATHLEEN JO PRICE, by and through its administratrix, JANINE ADAMICK, Plaintiffs, v. NEVADA FEDERAL CREDIT UNION, f/k/a/ NELLIS FEDERAL CREDIT UNION, AND ITS SUBSIDIARIES; FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, a California insurance corporation, UNITED FIDELITY LIFE INSURANCE COMPANY, a TEXAS insurance company, BENEFIT CONSULTANTS, INC., a California corporation, EQUFAX SERVICES, Defendants.	CV-S-86-306-HDM ORDER (Filed January 28, 1991)

The petition of AMEX for the return of the fifty-one thousand dollars ($51,000.00) deposited with the court on June 14, 1990 (#271) is GRANTED. The clerk of the court is directed to remit to AMEX the sum of fifty-one thousand dollars ($51,000.00).

It is so ORDERED.

DATED this 25th day of January, 1991.

/s/ Howard D. McKibben
HOWARD D. McKIBBEN
United States Judge

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, Plaintiff, vs. JANINE ADAMICK, THE ESTATE OF KATHLEEN JO PRICE, Deceased, Defendants.	CV-S-85-146-HDM (Base File)
JANINE ADAMICK, Individually, JOSEPH ADAMICK, individually and ESTATE OF KATHLEEN JO PRICE, by and through its administratrix, JANINE ADAMICK, Plaintiffs, v. NEVADA FEDERAL CREDIT UNION, f/k/a/ NELLIS FEDERAL CREDIT UNION, AND ITS SUBSIDIARIES; FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, a California insurance corporation, UNITED FIDELITY LIFE INSURANCE COMPANY, a TEXAS insurance company, BENEFIT CONSULTANTS, INC., a California corporation, EQUIFAX SERVICES, Defendants.	CV-S-86-306-HDM JUDGMENT IN FAVOR OF AMEX F/K/A FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY AND BENEFIT CONSULTANTS, INC. (Filed Nov. 26, 1990)

Based upon the foregoing Findings of Fact and Conclusions of Law entered herein, the Court

ORDERS, ADJUDGES AND DECREES as follows:

1. AMEX Life Assurance Company, Fireman's Fund American Life Insurance Company and Benefit Consultants, Inc. are entitled to a judgment in its favor against Janine M. Adamick, Joseph Adamick, the Estate of Kathleen Jo Price their privies, assigns, successors-in-interest and others claiming through them on all claims litigated in Cases Nos. CV-S-85-146-HDM and CV-S-86-306-HDM as circumscribed and delineated in the Court's Findings of Fact and Conclusions of Law entered this same date.

2. AMEX is entitled to an award of attorneys' fees in the form of a Judgement, against Janine Adamick, Joseph Adamick, the Estate of Kathleen Jo Price,

and their counsel, Janice M. Hayes, jointly and severally as a prevailing party herein and pursuant to 28 U.S.C. §1923.

3. Other matters, circumscribed in the Findings of Fact and Conclusion of Law, are the subject of deferral by this Court to the good judges of the Eighth Judicial District Court, in Case No. A 247534 styled as Janine and Joseph Adamick, Plaintiffs v. Fireman's Fund American Life Insurance Company, Nevada Federal Credit Union, fka Nellis Federal Credit Union, United Fidelity Life Insurance Company, Benefit Consultants, Inc., Equifax Services, Inc., and any such Judge or Judges of that Court are not constrained by this Judgment or Findings of Fact and Conclusions of Law entered herein from proceeding in Case No. A 247534, by virtue of the principle of comity between State and Federal Courts.

4. This judgment, as a final adjudication of the rights and liabilities of these parties, specifically embodies and incorporates the Findings of Fact and Conclusions of law herein, this date, by my hand.

5. The Court finds that there being no just cause for delay within the intendment of FRCP 54(b), it certifies this order and Judgment as final in favor of AMEX and enters it as final, and accordingly appealable upon its entry and notice as required by law.

DATED this 20th day of November, 1990.

/s/ Howard D. McKibben

HOWARD D. McKIBBEN

United States Judge

APP. 12

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FIREMAN'S FUND etc. vs. JANINE ADAMICK, etc.	CV-S-85-146-HDM CV-S-86-306-HDM CV-S-85-555-HDM
JANINE ADAMICK, etc., et al. vs. NEVADA FEDERAL CREDIT UNION	MINUTES OF THE COURT DATED: Feb. 5, 1987
JANINE ADAMICK et al vs. FIREMAN'S FUND etc, et al.	ENTERED (Feb. 10, 1987)

PRESENT:
THE HONORABLE HOWARD D. McKIBBEN UNITED STATES DISTRICT JUDGE

. . .
. . .
. . .

MINUTE ORDER IN CHAMBERS:

IN COURT PROCEEDINGS: HEARING MOTIONS

4:05 p.m. Court convenes.

The following ruling are made concerning

case number CV-S-86-555-HDM; IT IS ORDERED that the plaintiffs' motion for remand is granted and the part of the motion dealing with sanctions is denied (#14 in the file); IT IS FURTHER ORDERED that Equifax's motion to dismiss (#9 in the file), Equifax's motion to disqualify Janice M. Hayes as counsel for the plaintiffs (#10 in the file): United Fidelity's motion to dismiss (#11 in the file); and Fireman's motion to dismiss (#12 in the file) are denied, leaving request for remand (#23 in the file) and motion to vacate (#41 in the file denied as moot.

IT IS ORDERED that defense oral motion to consolidated cases CV-S-86-306-HDM and CV-S-85-146-HDM is granted. Case No. CV-S-85-146, HDM shall be designated as the Base File with all filings made in

this case only.

. . . . . .

CAROL C. FITZGERALD, Clerk

By: XXXXXXXXXXXXXXXXXXXX
Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, INC., nka, Plaintiff-Appellee vs. JANINE ADAMICK, individually, ESTATE OF KATHLEEN JO PRICE, deceased, Defendants-Appellants and EQUIFAX SERVICES, INC., Defendants.	No. 91-15575 DC# CV-85-146 HDM
FIREMAN'S FUND AMERICAN LIFE INSURANCE COMPANY, INC., Plaintiff-counter-defendant-Appellee, vs. JANINE ADAMICK, individually, ESTATE OF KATHLEEN JO PRICE, deceased, et al., Defendants-counter-plaintiffs-Appellants.	No. 91-15947 DC# CV-86-306 HDM Nevada (Las Vegas) ORDER (Filed Nov. 1, 1991)

Before: FLETCHER, LEAVY and T.G. NELSON, Circuit Judges

Appellants' Motions to reconsider this court's August 22, 1991 orders dismissing Nos. 91-15947 and 91-15573 are denied in their entirety. A copy of the mandate shall issue forthwith. No further filings will be accepted in these closed dockets.

28 U.S.C. §1332

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000, exclusive of interest and costs, and is between-

(1) citizens of different States:

. . . .

(c) For the purposes of this section and section 1441 of this title---

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed

to be a citizen only of the same State as the decedent . . . .

28 U.S.C. §1446

PROCEDURE FOR REMOVAL

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

28 U.S.C. §1447(d)

PROCEDURE AFTER REMOVAL GENERALLY

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to Section 1443 of this title shall be reviewable by appeal or otherwise.

U.S.C. §1923

Docket fees and costs of briefs.

(a) Attorney's and proctor's docket fees in courts of the United States may be taxed as costs as follows:

$20 on trial or final hearing (including judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and maritime jurisdiction where the libellant recovers $50 the proctor's docket fee shall be $10.).

28 U.S.C. §2106

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

SUPREME COURT RULE 10(1)(a)

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

.1. A petition for a writ of certiorari will be granted only when there are special and important reasonx therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course

of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this court's jurisdiction.

CIRCUIT RULE 11-3

Retention of the Transcript and Clerk's Record in the District Court During Preparation of the Briefs.

In all cases, as authorized by FRAP 11(c), both the transcript and the clerk's record shall remain in the custoday of the district court for use by the parties in preparing their briefs.

CIRCUIT RULE 11-4

RETENTION OF CLERK'S RECORD IN THE DISTRICT COURT IN CIVIL CASES WHERE EXCEPTS OF RECORD ARE FILED: RETENTION OF PHYSICAL EXHIBITS IN THE DISTRICT COURT: TRANSMITTAL OF REPORTER'S TRANSCRIPT; TRANSMITTAL OF CLERK'S RECORD UPON REQUEST.

11.4.1 Retention Of Clerk's Record In the District Court.

Except as noted below, in all civil

cases where excerpts of record are to be filed with the Court of Appeals pursuant to Circuit Rule 30-1, the entire clerk's record shall be retained in the district court unless requested by the Court of Appeals. This Provision shall not apply to Tax CourtCases or to cases involving review of Social Security Administration determinations of eligibility for disability insurance benefits. In appeals from the Bankruptcy Appellate Panel, records will be treated in the same fashion as records on appeal in other civil cases arising from the district court.

CIRCUIT RULE 27-7

With the approval of the Court, the Chief Judge may delegate to the clerk or a designated deputy clerk authority to decide unopposed motions that are subject to disposition by a single judge and do not dispose of the appeal. The order shall be subject to reconsideration by a judge of the Court if exception is received within 10 days after it is entered.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 27-7

(1) Motions acted on by Clerk's Office Personnel.

(a) PROCEDURAL MOTIONS. All non-dispositive procedural motions in appeals or proceedings that have not yet been calendared are acted on by clerk's office personnel under the supervision of the duty judge according to guidelines adopted by the court. . . . . Clerk's office

personnel may act on procedural motions whether opposed or unopposed, but if there is any question under the guidelines as to what action should be taken on the motion, it is referred to the duty judge.

Procedural motions that are acted on by clerk's office personnel under the supervision of the duty judge include motions for extension of time to file abrief, motions to consolidate appeals and motions to file a brief exceeding page limits.

(b) ORDERS OF DISMISSAL. The Clerk is authorized to enter orders of dismissal in civil cases where the parties to an appeal or other proceeding have signed and filed with the Clerk an agreement that the proceedings be dismissed, specifying terms as to the payment of costs. (See FRAP 42(b).)

CIRCUIT RULE 30-1

The Excerpts Of Record

Appeals before the Court of Appeals shall be on the original record without requirement of the appendix prescribed by FRAP 30. Excerpts of record, in cases other than petitions for review or enforcement of agency orders, shall be filed as provided below.

30-1.1. FILING OF THE EXCERPTS OF RECORD.

At the time the appellant's brief is filed, the appellant shall file 5 copies of the excerpts of record bound separately from the briefs. The appellant shall serve 1 copy of the excerpts on each of the other parties.

CIRCUIT RULE 31-2

31.2.1. REQUIREMENT OF TIMELY FILING

(a) Parties shall observe the briefing schedule set forth in FRAP 31(a)

unless a briefing schedule is established by an order of the Court of Appeals. . .

CIRCUIT RULE 33-1

CIVIL APPEALS DOCKETING STATEMENT; PRE-BRIEFING CONFERENCE PROGRAM.

Except as provides in this rule, the appellant/petitioner in each civil case shall complete and submiit a Civil Appeals Docketing Statement on the form provided by the court.

In any civil case, the court may direct that a conference be held before a judge or a senior staff member designated as a conference attorney. The procedures governing the prebriefing conference program are available from the Clerk.

(c) MOTIONS FOR CLARIFICATION, RECONSIDERATION OR REHEARING. A motion for clarification, reconsideration or rehearing of an action taken by clerk's office personnel is decided by the duty judge. Opposition to a motion received after action has been taken by clerk's office personnel is treated as a motion for reconsideration. A motion for reconsideration of a prebriefing conference attorney's order is decided by the administrative judge for the unit from which the matter arose.

FEDERAL RULE OF CIVIL PROCEDURE 6(a)

(a) Computation. In computing any perior of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated perior of time begins to run shall not be included. The last day of the so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday . . . . As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

FEDERAL RULE OF CIVIL PRO. 54(b)

(b) Judgment Upon Multiple Claims
Or Involving Multiple Claims
Or Multiple Parties

When more than one claim for relief is presented in action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may directy the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to

any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.